

Message

From: Miller, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=342F906FB3E0490C8906E2104397D2CF-YOUNG, TIA]
Sent: 11/28/2018 6:43:06 PM
To: Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Stachowiak, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2710013bd33a44ab823c8e6d9b94275a-RSTACHOW]; Veney, Carla [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c354b58bf2b1464d8afac7bbd2a7a88c-CVeney]
Subject: Matt: Draft OGC Weekly Report 11.29.18
Attachments: FINAL OGC Weekly Report 11.29.2018.docx

Good afternoon Matt,

Attached please find the OGC Weekly Report, which Justin has reviewed. Please let me know if you have any feedback on the attached by tomorrow morning. The report will sent to the weekly report group **tomorrow, November 29 at 12:00pm.**

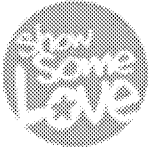
Hot Topics

- *Puget Soundkeeper v. EPA*, No. 15-1342 (W.D. Wash.). New CWA Decision: On November 26, the District Court issued a decision vacating 2018 Applicability Date Rule nationwide. The Applicability Date rule, finalized in February 2018, extended until February 2020 the effective date of the 2015 CWA rule defining ‘waters of the United States. While the court rejected the plaintiffs’ argument that EPA had no authority to promulgate the Applicability Date Rule, the court concluded that the Rule was arbitrary and capricious because the public was deprived of a meaningful opportunity to comment on the 2015 Rule or the pre-existing regulatory regime. The court concluded this was a “serious error” under the APA and vacated the Applicability Date Rule nationwide.
- *Clean Water Action v. EPA*, No. 18-5149 (D.C. Cir.). New CWA Decision: On November 20, the D.C. Circuit granted a joint motion for continued abeyance in an appeal of a district court order involving EPA's APA section 705 stay of parts of the 2015 steam electric ELG rule, including whether the district court had jurisdiction over claims concerning EPA's 2017 steam electric postponement rule. This case will now be stayed until the Fifth Circuit rules on a separate petition for review of EPA's 2017 steam electric postponement rule, where briefing is currently underway (Case No. 18-60079). EPA must file status reports with the Court every 60 days beginning on January 22, 2019, and the parties must file motions to govern further proceedings within 30 days of the Fifth Circuit's disposition of *Clean Water Action v. EPA*, No. 18-60079.
- *Ctr. for Bio. Diversity v. EPA et al.*, No. 18-2049 (D. Or.). New Litigation: On November 27, Plaintiffs filed a complaint in US District Court for the District of Oregon. The Complaint alleges that EPA has failed to take a final action regarding Oregon’s 2012 Section 303(d) List, especially with respect to coastal waters that CBD alleges are impaired by ocean acidification. On December 21, 2016, EPA partially approved and partially disapproved Oregon’s 2012 303(d) list, proposing to add waterbody segments to the State’s list and expressly taking no action with respect to potential marine water impairments due to ocean acidification. EPA has not taken any further action with respect to the State’s list since that time. The Complaint alleges a failure to perform a non-discretionary duty under CWA section 303(d) to identify impaired waters after EPA’s partial disapproval of Oregon’s 2012 303(d) list, as required by section 303(d)(2) of the CWA, 33 U.S.C. § 1313(d)(2).

Upcoming Major Events

- *Physicians for Social Responsibility, et al. v. Pruitt*, No. 17-2742 (D.D.C.) (Challenge to October 2017 advisory committee directive). Oral Argument: December 7 on EPA’s Motion to Dismiss.

- *Sierra Club v. EPA*, No. 16-1158 (D.C. Cir.) (Petition for judicial review of monitoring rule revisions, 81 Fed. Reg. 17,248 (Mar. 28, 2016)). Oral Argument: December 10.
- *Upper Missouri Waterkeeper v. US EPA*, No. 16-00052 (D. Mont.) (Challenge to EPA's approval of Montana's nutrient WQS variances). Hearing: December 12.
- *States of New York et al. v. Pruitt*, No. 18-1030 (S.D. N.Y.); *NRDC v. EPA*, 18-cv-1048 (S.D. N.Y.) (challenge to 2018 WOTUS Applicability Rule). Oral Argument: December 12.



Tia Miller
Operations Special Assistant
Office of General Counsel | Immediate Office
Environmental Protection Agency
PHONE: 202-564-8942



Click [here](#) to donate!